

IN THE
MISSOURI SUPREME COURT

JESSIE CARTER,

Appellant,

vs.

STATE OF MISSOURI,

Respondent.

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) No. SC 87074
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APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT FOR MARIES COUNTY, MISSOURI,
THE HONORABLE DOUGLAS E. LONG, JR., JUDGE

APPELLANT’S SUBSTITUTE STATEMENT, BRIEF AND ARGUMENT

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JURISDICTIONAL STATEMENT

Appellant was convicted of three counts of first degree murder in Maries County Circuit Court cause number CR298-36FX. The Circuit Court, the Honorable John D. Wiggins presiding, sentenced Appellant to three consecutive terms of life without parole. Appellant appealed his conviction to the Missouri Court of Appeals, Southern District; that Court affirmed Appellant's convictions. State v. Jessie Carter, 71 S.W.3d 267 (SD23959) (Mo. App. S.D. 2002). The mandate issued April 15, 2002.

On July 8, 2002, Appellant filed an unsigned pro se motion under Supreme Court Rule 29.15 motion to vacate, set aside or correct judgment or sentence. Appellant made his filing in the Circuit Court for Jackson County, Missouri, not the sentencing court. The Circuit Clerk for Jackson County sent Appellant's pro se motion to Maries County but it was not received until July 17, 2002, the ninety-third (93rd) day after the filing of the mandate in the direct appeal.

On January 22, 2003, the Motion Court, the Honorable Douglas E. Long, Jr., presiding, appointed post-conviction counsel. On April 23, 2003, Appellant filed an amended motion for post-conviction relief under Supreme Court Rule 29.15. Appellant signed appointed counsel's amended motion. On August 16, 2004, the Motion Court granted a motion by the state to dismiss the post-conviction motion.

After the Missouri Court of Appeals, Southern District, issued its Opinion dismissing the appeal, this Court granted appellant's Application for Transfer pursuant

to Rule 83.03. This Court has jurisdiction of this appeal, Article V, Section 10, Mo. Const.; Rule 83.04.

* * * * *

The record will be cited to as follows: Trial Transcript, “Tr.” (transferred from the direct appeal, State of Missouri v. Jessie Carter, SD23959), Legal File, “LF” (transferred from the direct appeal, State of Missouri v. Jessie Carter, SD23959) and the Post-Conviction Legal File, “PCR-LF.”

STATEMENT OF FACTS

In the Circuit Court of Maries County, the State of Missouri charged that Appellant Jessie Carter, while acting with another, committed the felonies of murder in the first degree (Counts I, III and V) and armed criminal action (Counts II, IV and VI) (LF 12-16). The state later dismissed the armed criminal action counts and the matter proceeded to a jury trial on September 18, 2000 (LF 8). Following conviction on all counts, the Honorable John D. Wiggins sentenced Appellant to three consecutive sentences of life without parole in the Missouri Department of Corrections (LF 100-101).

Appellant appealed his convictions to the Missouri Court of Appeals, Southern District, which affirmed the judgments and sentences (LF 102). State v. Jessie Carter, 71 S.W.3d 267 (Mo. App. S.D. 2002). The Appellate Court's mandate from the direct appeal issued April 15, 2002 (PCR-LF 25).

Appellant filed his pro se motion for post-conviction relief with the Circuit Court for Jackson County, Missouri (PCR-LF 3). Appellant did not sign his pro se motion; Appellant, using an authorized Missouri Form 40, failed to complete and sign the statement on page five of that form (PCR-LF 20). Appellant did, however, attach a signed and notarized In Forma Pauperis Affidavit to his motion (PCR-LF 21). To correct Appellant's missing signature, both Appellant and post-conviction counsel signed the amended motion (PCR-LF 28).

Though the motion was clearly intended for filing in Maries County, as evidenced by its title page and Appellant's In Forma Pauperis affidavit (PCR-LF 3, 21),

Appellant mailed his motion to Jackson County, Missouri (PCR-LF 3). On July 8, 2002, Jackson County file-stamped Appellant's motion and then crossed-out the stamp, writing "filed in error" next to the file-stamp (PCR-LF 3). July 8, 2002, was the eighty-fourth (84th) day following the mandate in Appellant's direct appeal. On July 17, 2002, the Circuit Court for Maries County received and file-stamped Appellant's pro se motion for post-conviction relief (PCR-LF 3). But July 17, 2002, was the ninety-third (93rd) day following the mandate in Appellant's direct appeal.

The motion court, the Honorable Douglas E. Long, Jr., presiding, appointed post-conviction counsel on January 22, 2003 (PCR-LF 1). On March 14, 2003, the court granted post-conviction counsel's request for thirty (30) additional days in which to file an amended motion (PCR-LF 1). On April 23, 2003, Appellant filed an amended motion, signed by both Appellant and counsel, for post-conviction relief (PCR-LF 29). Appellant explained to the motion court that his pro se post-conviction motion was originally filed with Jackson County on July 8, 2002 (PCR-LF 22-23, 30-31).

The state filed a Motion to Dismiss with Brief Suggestions on July 6, 2004, alleging that Appellant's pro se motion for post-conviction relief was untimely filed (PCR-LF 39). The motion court granted the state's motion to dismiss without findings noting only "movant's motion was filed more than 90 days after mandate affirming convictions" (PCR-LF 42). Neither the state, in its motion, nor the motion court commented on Appellant's missing signature on the pro se motion nor the later correction made by adding it to the amended motion.

Appellant appealed the motion court's dismissal to the Missouri Court of Appeals, Southern District (PCR-LF 43). The Southern District held that while Appellant's *pro se* motion may have been timely, the appeal was to be dismissed because Appellant had not promptly corrected the absent signature and thus Appellant failed to invoke the jurisdiction of the circuit court. Jessie Carter v. State, No. SD26541, (Mo. App. S.D. 2005), pg. 4. The Southern District reasoned Appellant had to sign his *pro se* pleading for the motion court's jurisdiction to attach, citing Rule 55.03(a)(2004) and Tooley v. State, 20 S.W.3d 519, 520 (Mo. banc 2000). Slip opinion at 4. The Southern District observed,

[t]he only evidence of Movant's awareness that his signature was omitted is in Movant's statement of facts in which he asserts that he signed his amended motion because his *pro se* motion was unverified. This fact demonstrates that Movant was aware that his signature was missing from his *pro se* motion, yet he took no steps to promptly correct the omission as allowed by Rule 55.03(a).

Slip opinion at 4.

Following an unsuccessful Motion for Rehearing and/or Transfer, Appellant petitioned this Court for transfer, which was granted on September 20, 2005.

POINT RELIED ON

The motion court clearly erred in dismissing Appellant's Rule 29.15 motion for post-conviction relief as untimely filed, in violation of Appellant's rights to due process of law and access to the courts, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 14 of the Missouri Constitution. The record leaves the firm impression that a mistake has been made, in that the motion court's own records, as reflected in the date stamp on the *pro se* motion, indicate that the *pro se* motion, though unsigned by Appellant, was timely filed on July 8, 2002, almost a week before it was due. That Appellant filed his *pro se* motion in the Circuit Court for Jackson County instead of the Circuit Court for Maries County should not render his otherwise timely-filed motion untimely. Under § 476.410 RSMo (2000) and Supreme Court Rule 51.10, the Circuit Court for Maries County should have treated Appellant's motion as though it had originally been filed in that circuit. Moreover, the Southern District of the Missouri Court of Appeals erred when it concluded Appellant's signature on his amended motion did not constitute prompt correction of the missing signature on the *pro se* motion.

Nicholson v. State, 151 S.W.3d 369 (Mo. banc 2004)

Tooley v. State, 20 S.W.3d 519 (Mo. banc 2000)

Wallingford v. State, 131 S.W.3d 781 (Mo. banc 2004)

Mo. Const., Art. I, §§ 10 and 14

Mo. Revised Statutes § 476.410 (2000)

Mo. Supreme Court Rules 29.15, 51.10 and 55.03

U.S. Const., Amendments V, VI and XIV.

ARGUMENT

The motion court clearly erred in dismissing Appellant’s Rule 29.15 motion for post-conviction relief as untimely filed, in violation of Appellant’s rights to due process of law and access to the courts, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 14 of the Missouri Constitution. The record leaves the firm impression that a mistake has been made, in that the motion court’s own records, as reflected in the date stamp on the *pro se* motion, indicate that the *pro se* motion, though unsigned by Appellant, was timely filed on July 8, 2002, almost a week before it was due. That Appellant filed his *pro se* motion in the Circuit Court for Jackson County instead of the Circuit Court for Maries County should not render his otherwise timely-filed motion untimely. Under § 476.410 RSMo (2000) and Supreme Court Rule 51.10, the Circuit Court for Maries County should have treated Appellant’s motion as though it had originally been filed in that circuit. Moreover, the Southern District of the Missouri Court of Appeals erred when it concluded Appellant’s signature on his amended motion did not constitute prompt correction of the missing signature on the *pro se* motion.

Standard of Review

Appellate review of the dismissal of a motion for post-conviction relief under Rule 29.15 “is limited to the determination of whether the findings and conclusions of the trial court are clearly erroneous.” Day v. State, 770 S.W.2d 692, 695 (Mo. banc 1989). The findings and conclusions of a motion court are clearly erroneous “only if,

after a review of the entire record, the reviewing court is left with the definite and firm impression that a mistake has been made.” Rotellini v. State, 77 S.W.3d 632, 634 (Mo. App. E.D. 2002).

The Motion Court Erred by Concluding Appellant’s Pro Se Motion was Untimely

Appellant’s pro se motion was timely filed, though it was filed in Jackson County, because Missouri statute and Missouri Supreme Court Rules prescribe that motions filed in a circuit court of incorrect venue may be transferred to a court designated to hear the particular matter. Nicholson v. State, 151 S.W.3d 369, 370 (Mo. banc 2004).

The state filed its Motion to Dismiss with Brief Suggestions on July 6, 2004, alleging that Appellant’s pro se motion for post-conviction relief was untimely filed (PCR-LF 39). The state argued that the deadlines for filing were “reasonable” and Appellant exceeded the deadline because his pro se motion had not been filed until July 17, 2002, three days after it was due (PCR-LF 39 citing Day v. State, 770 S.W. 2d 692 (Mo. banc 1989); Rule 29.15. The motion court granted the state’s motion to dismiss without findings noting only “movant’s motion was filed more than 90 days after mandate affirming convictions” (PCR-LF 42).

The authorizing Supreme Court rule for post-conviction relief, Rule 29.15, “provides the exclusive procedure” by which a prisoner may seek post-conviction relief “in the sentencing court.” Rule 29.15(a). The rules of civil procedure govern post-conviction proceedings “insofar as applicable.” Rule 29.15(a). Rule 29.15(b) requires that any motion to vacate, set aside, or correct a person’s judgment or sentence be filed

within 90 days after the date the mandate of the appellate court is issued. The rule states that “[f]ailure to file a motion within the time provided by this Rule 29.15 shall constitute a complete waiver of any right to proceed under this Rule 29.15 and a complete waiver of any claim that could be raised in a motion filed pursuant to this Rule 29.15.” Rule 29.15(b). According to Rule 29.15, Appellant’s pro se motion was due on or before July 15, 2002. Rule 29.15(b).¹

Appellant does not suggest that the 90-day time period contemplated by Rule 29.15 should be extended; that challenge has been rejected. *See, e.g., Day v. State*, 770 S.W.2d at 695. This Court created the time limits for filing post-conviction motions “[t]o avoid . . . delays and to prevent litigation of stale claims,” and has determined that compliance with the time limits is “mandatory.” *Day v. State*, 770 S.W.2d at 693. However, the motion court’s determination in this case that Appellant’s pro se motion was “untimely filed” is clearly erroneous where Appellant did file in a timely way, but in an incorrect court.

This Court issued its mandate affirming Appellant’s judgment and sentence on April 15, 2002. *State v. Jessie Carter*, 71 S.W.3d 267 (Mo. App. S.D. 2002). Thus, Appellant’s pro se motion was due on or before Monday, July 15, 2002 (the 90th day was a Sunday, July 14, 2002). Rule 29.15(b), Rule 44.01(a). As previously noted, Appellant’s pro se motion was filed with the Circuit Court for Jackson County on July

¹ July 14, 2002, the ninetieth day, was a Sunday.

8, 2002, and, if the Circuit Clerk's letter to Appellant is to be believed, possibly received as early as June 4, 2002 (PCR-LF 3, 28).

As noted in Broom v. State, “[i]n determining the timeliness of filing [a *pro se* Rule 29.15 motion], the date of receipt is crucial.” 111 S.W.3d 563, 566 (Mo. App. W.D. 2003) (holding certified mail receipt indicated court received pro se post-conviction motion within time limits for filing the motion). “The date a document is stamped as being received is evidence of the date of receipt.” Phelps v. State, 21 S.W.3d 832, 833 (Mo. App. E.D. 1999); see also Jameson v. State, 125 S.W.3d 885, 888-889 (Mo. App. E.D. 2004); Unnerstall v. State, 53 S.W.3d 589, 591 (Mo. App. E.D. 2001); Goodson v. State, 978 S.W.2d 363, 364 (Mo. App. E.D. 1998).

Significantly, § 476.410, RSMo (2000) requires that “[t]he division of a circuit court in which a case is filed laying venue in the wrong division or wrong circuit shall transfer the case to any division or circuit in which it could have been brought.” This statute gives the circuit court in which a pleading was erroneously filed “limited jurisdiction . . . to transfer any case filed in an improper venue to any circuit court otherwise designated by the legislature to hear the particular matter.” State ex. rel. Director of Revenue v. Gaertner, 32 S.W.3d 564, 567-68 (Mo. banc 2000). Moreover, a civil action which has been transferred “shall be treated and determined as if it had originated in the receiving court.” Rule 51.10.

Because § 476.410, RSMo requires transfer of a case filed in the wrong circuit to the proper court, and Rule 51.10 requires that the proper court treat the case as though it had originated there, the Circuit Court for Maries County should have treated

Appellant's pro se motion as though it was timely filed in its court on July 8, 2002. The motion court's conclusion that Appellant's motion was untimely filed is clearly erroneous, and this Court must reverse the dismissal of his Rule 29.15 motion.

Although the Due Process Clause of the Fifth Amendment to the United States Constitution does not establish any right to collaterally attack a final judgment or conviction, United States v. MacCollum, 426 U.S. 317, 323, 96 S. Ct. 2086 (1976), state statutes can create interests that are entitled to procedural due process protection under the Fourteenth Amendment. Vitek v. Jones, 445 U.S. 480, 488, 100 S. Ct. 1254 (1980). While one may not have a constitutional or inherent right to a particular liberty interest, once a state has afforded the opportunity for that interest, due process protections must be invoked to ensure that the state-created right is not arbitrarily denied or abrogated. Id. at 488-89.

This Court recently addressed a scenario exactly like the one Appellant presents. According to the Court,

[o]n January 6, 2003, Nicholson filed his *pro se* Rule 29.15 motion for post-conviction relief in the circuit court of the City of St. Louis.

However, under Rule 29.15(a), the proper venue for the motion was in Cape Girardeau County. The circuit court of the City of St. Louis forwarded the motion to the circuit court of Cape Girardeau County, but the motion was not received until January 9, 2003, two days after the January 7, 2003 filing deadline. The motion court dismissed Nicholson's

Rule 29.15 motion with prejudice, finding that it was untimely filed, thus depriving the court of jurisdiction.

Nicholson v. State, 151 S.W.3d 369, 370 (Mo. banc 2004). This Court held that §476.410 and Rule 51.10 required Cape Girardeau to treat the pro se filing as timely despite the fact that it had been filed in St. Louis City. Id. In reversing the Circuit Court's judgment that Mr. Nicholson's pro se motion was untimely, the Court concluded that the earlier date, January 6th, should control. Id. The same analysis applies to Appellant's case; Maries County should have treated Appellant's pro se motion as timely-filed on July 8, 2002. The motion court's ruling granting the state's motion to dismiss must be reversed.

By promulgating Rule 29.15, the Missouri Supreme Court created a means for a convicted felon confined in a correctional facility to challenge his conviction or sentence. Day v. State, 770 S.W.2d at 693. Thus, a prisoner in Missouri has a lawfully created interest in pursuing a post-conviction action, and any arbitrary deprivation of that interest would violate due process. *See* Vitek v. Jones, 445 U.S. at 488-89. In Appellant's case, the dismissal of his post-conviction motion for relief as untimely filed constitutes an arbitrary deprivation of his right to pursue the remedy of post-conviction relief under Missouri Supreme Court Rule 29.15, as he filed his motion with the Circuit Court for Jackson County before the due date, and the court properly transferred his case to the Circuit Court for Maries County for adjudication. Thus, the motion court's denial of Appellant's Rule 29.15 motion as untimely-filed was clearly erroneous.

The Missouri Court of Appeals Compounded the Motion Court's Error when it Dismissed the Appeal for Failing to "Promptly Correct" his Missing Signature

The Missouri Court of Appeals for the Southern District, however, dismissed Appellant's appeal not because of lack of timely filing, but rather because Appellant's unsigned *pro se* motion was not corrected promptly. Slip opinion at 4. The Southern District held Appellant had to sign his pro se pleading for the motion court's jurisdiction to attach, citing Rule 55.03(a)(2004) and Tooley v. State, supra at 520. Slip opinion at 4. The Court cited Rule 55.03(a) which warns "[a]n unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." Slip opinion at 4 quoting Rule 55.03(a)(2004).

The Southern District overlooked, or at least misconstrued, material matters of fact, when it concluded Appellant and his counsel did not act promptly to correct the missing signature. Appellate counsel (who also served as post-conviction counsel) simply did not notice until the date the amended motion was due that Appellant failed to sign his *pro se* motion. Appellant and counsel merely meant to alert the appellate court to the steps they took in circuit court to correct the deficiency. To that end, appellate counsel stated in his brief, "[b]ecause Appellant's *pro se* motion was unverified, both Appellant and post-conviction counsel signed the amended motion" Appellant's Brief at 7. Appellant and counsel did not mean to suggest that either were aware of the deficiency or that it had been called to their attention prior to the filing of the amended motion. In retrospect, appellate counsel's statement was too neutral in tone, but it was not meant to suggest Appellant or counsel were ignoring the deficiency;

counsel and Appellant believed they had corrected it. Moreover, Mr. Carter did sign the forma pauperis affidavit on his pro se motion which reasonably signaled his intention to proceed post-conviction (PCR-LF 21).

The Court of Appeals also overlooked material matters of law in reaching the conclusion it did. Over the years, this Court has eased the requirements for inmates seeking to file pro se motions for post-conviction relief under Rule 29.15. Whereas the initial version of Rule 29.15, effective January 1, 1988, required that both the pro se and amended motions include the verified signature of the movant, Rule 29.15(d) and (f)(Repealed January 1, 1996), the current Rule 29.15 requires only that the movant declare in the pro se motion that he has included all the claims for relief known to him and that he understands he waives any claim for relief known to him that is not included in the motion. Rule 29.15(d). The current version of Rule 29.15(g) requires only that the movant or his attorney sign the amended motion. The gradual easing of these requirements has been reflected in the case law.

In Wilson v. State, 813 S.W.3d 833 (Mo. banc 1991), Wilson filed an unverified pro se Rule 24.035 motion, but his attorney filed a timely, properly verified amended motion. Id. at 834. The Court held, “Because the sole deficiency in the pro se motion, the absence of verification, was remedied by a timely filed, verified, amended motion that presented the claims litigated in this proceeding, the purpose of the verification requirement was satisfied in this case.” Id. This Court found the motion court had jurisdiction to proceed on the amended motion. Id. In Wilson then, the arguably more stringent verification requirement was met by the filing of a timely, verified amended

motion. Id. Here, Appellant took the additional precaution of signing his amended motion (PCR-LF 38).

In State v. Bradley, 811 S.W.2d 379, 383 (Mo. banc 1991), the movant filed a pro se motion that was signed and verified by the movant, but which lacked his declaration that he had listed all of the grounds for relief known to him, and that he acknowledged waiver of any unlisted grounds. This Court held that such a motion does not suffer from a fatal jurisdictional infirmity. Id. The Court noted that Rule 29.15(e) directs appointed counsel to amend the pro se motion to allege any additional grounds for relief that were omitted from the pro se motion. Id. To make the absence of a declaration a jurisdictional defect would conflict with the motion court having the power to appoint counsel and to permit an amendment. Id.

Additionally, the Bradley Court pointed out the purpose of the verification requirement was to discourage frivolous and unfounded pleadings, whereas the declaration requirement was intended to assure finality of the adjudication in a single proceeding. Id. at 383-384. The Court reasoned the declaration was not necessary to achieve the goal of finality, and that appointed counsel could supply the required declaration in a timely amended motion. Id. The Court found the timely filing of the defendant's verified pro se motion, even though it failed to include the declaration that all claims were included, was sufficient to invoke the circuit court's jurisdiction. Id.

In State v. White, 873 S.W.2d 590, 594 (Mo. banc 1994), this Court finally did away with the requirement that the pro se motion be verified. This Court held that "henceforth, for purposes of filing a pro se 29.15 motion, the defendant's signature will

be sufficient verification ‘that he has listed all grounds for relief known to him and acknowledging his understanding that he waives any ground for relief known to him that is not listed in the motion.’” Id.

In relaxing the verification requirements for pro se motions, this Court distinguished between an original *pro se* motion and an amended motion. This Court noted the pro se motion is “relatively informal” and “need only give notice to the trial court, the appellate court, and the State that movant intends to pursue relief under Rule 29.15.” Id. citing, Bullard v. State, 853 S.W.2d 921, 922 (Mo. banc 1993). On the other hand, the amended motion is a “final pleading, which requires legal expertise”, and counsel must be appointed to ensure that it is drafted properly. White, 873 S.W.2d at 594 citing, Bullard, 853 S.W.2d at 922.

In Tooley, this Court considered the amended post-conviction Rule signature requirements for pro se pleadings. Tooley, *supra*. The Court concluded Tooley’s unsigned pro se motion under Rule 24.035 was effectively a nullity that did not invoke the motion court’s jurisdiction. Id. The Court cautioned,

The signature requirement is not a hollow, meaningless technicality. It constitutes a certificate that the filing is not for any improper purpose and is well grounded in fact and primarily has the objective of the elimination from the court system of groundless actions. Requiring a signature also makes certain the party actually assents to the filing of the action on his or her behalf.

Id. at 520. In Tooley’s case, this Court allowed he should have been given the opportunity to correct the omission within the time allowed for filing an amended motion. Id. But in Wallingford v. State, 131 S.W.3d 781 (Mo. banc 2004), the Court extended the ability of pro se movants and their counsel to correct unsigned pro se motions.

In Wallingford, this Court permitted Mr. Wallingford to correct his absent signature by attaching the movant’s signature thirty four (34) days after the date for filing the amended motion. Id. at 782. Counsel first filed a “Motion to Correct Clerical Mistake under Rule 29.12(c)” four days after filing the amended motion, noting that the movant had inadvertently forgotten his signature. Id. Thirty days later, counsel filed a “Declaration” containing her client’s signature and moved the court to accept the declaration because counsel averred she discovered the deficiency just before filing the amended motion. Id. The Court considered Wallingford’s and counsel’s efforts prompt correction under Rule 55.03(a). Id. Appellant here attempted to correct his signature more promptly than Wallingford, yet the Missouri Court of Appeals, Southern District, considered his effort tardy.

For the foregoing reasons, the motion court should have treated Appellant’s motion for post-conviction relief, filed in the Circuit Court for Jackson County before the due date of July 15, 2002, as timely-filed. The motion court’s failure to do so has deprived Appellant of his rights to due process of law and access to the courts in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 14 of the Missouri Constitution. This Court

must reverse the motion court's finding that Appellant's pro se motion for post-conviction relief was untimely filed and remand for further proceedings on his post-conviction motion.

CONCLUSION

WHEREFORE, Appellant requests that this Court reverse the judgment of the motion court dismissing his Rule 29.15 motion for post-conviction relief as untimely filed and remand this cause for further proceedings on his post-conviction motion.

Respectfully submitted,

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Certificate of Compliance and Service

I, Scott Thompson, hereby certify the following: The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2002, in Times New Roman size 13 point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 4,674 words, which does not exceed the 31,000 words allowed for an appellant's brief.

The floppy disk filed with this brief contains a complete copy of this brief. It has been scanned for viruses using a McAfee VirusScan program, which was updated in September, 2005. According to that program, the disks provided to this Court and to the Attorney General are virus-free.

Two true and correct copies of the attached brief and a floppy disk containing a copy of this brief were mailed, postage prepaid this 11th day of October, 2005, Shaun Mackleprang, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102.

Scott Thompson

IN THE
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vs.)	No. SC87074
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APPEAL TO THE MISSOURI SUPREME COURT
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